

December 9, 2004

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE ROBERT LEE ALBRECHT,

Debtor.

BAP No. UT-04-023

ROBERT LEE ALBRECHT,

Appellant,

v.

ELIZABETH R. LOVERIDGE, Trustee,

Appellee.

Bankr. No. 03B-37482
Chapter 7

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Utah

Before McFEELEY, Chief Judge, BOHANON, and BROOKS¹, Bankruptcy
Judges.

McFEELEY, Chief Judge.

Appellant/Debtor Robert Albrecht (“Debtor”) appeals an “Amended Order Approving Motion to Extend Deadline for Filing Complaints Concerning Debtor’s Discharge,” arguing that the bankruptcy court erred when it entered a proposed order prepared by his Chapter 7 Trustee. First, the Debtor argues that his due process rights were violated because in the order the Trustee expanded

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

¹ Honorable Sidney B. Brooks, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Colorado, sitting by designation.

the bankruptcy court's oral ruling. Second, the Debtor argues that the bankruptcy court exceeded its equitable powers because a bankruptcy judge does not have the authority to accelerate the April 15 due date for filing tax returns. After reviewing the record, we conclude that this appeal is moot and so decline to address its merits.

I. Background

The Debtor filed for relief under Chapter 7 of the Bankruptcy Code on October 13, 2003. Elizabeth R. Loveridge was appointed the Chapter 7 Trustee ("Trustee"). The first meeting of creditors was held on November 19, 2003. At that time, the Trustee directed the Debtor to provide copies of his divorce decree, his 2002 and 2003 state and federal tax returns, and any 2003 tax refunds.

The deadline for objecting to the Debtor's discharge was January 20, 2004. As of that date, the Debtor had not provided the Trustee with the requested items and the Trustee filed a Motion to Extend Deadline for Filing Complaints Concerning Debtor's Discharge and Notice of Hearing ("Motion to Extend"). The Motion to Extend asked for the following: an extension of the deadline to file an objection to discharge; an order requiring the Debtor to turn over his 2002 and his 2003 tax returns and any tax refunds due him by April 14, 2003.

The bankruptcy court heard the Motion to Extend on February 11, 2004. The Debtor did not file an objection to the Motion to Extend, nor did he raise an objection at the hearing. The bankruptcy court orally ordered the Debtor to produce the divorce decree within ten days and the tax returns by April 14, 2004, and asked the Trustee to prepare a written order. The tax refunds were not addressed by the bankruptcy court or either of the parties at the hearing.

The Trustee submitted a proposed Amended Order, which included

language requiring the Debtor to turn over any tax refunds due him. The Debtor objected to the Amended Order, claiming that it did not comport with the bankruptcy court's oral ruling. Specifically, he objected to the language requiring him to turn over tax refunds because the 2002 refunds were not property of the estate and he did not yet possess the 2003 refunds. The Debtor asked that the court delete the words "and any refunds due him." On February 25, 2004, the bankruptcy court entered the Amended Order without making any changes ("Order"). At issue in this appeal is the following language in the Order:

IT IS HEREBY ORDERED that the Motion to Extend Deadline for Filing Complaints Concerning the Debtor's Discharge is granted as to the Trustee, and the deadline to file complaints pursuant to 11 U.S.C. § 727 is extended to April 21, 2004. It is further ordered that the Debtor turnover a copy of his divorce by February 21, 2004, and his 2002 and 2003 federal and state tax returns and any refunds due him by April 14, 2004, and failure to do so shall be grounds for denial of the Debtor's discharge pursuant to 11 U.S.C. § 727.

Order, Appellant's Appendix tab 4. This appeal timely followed.

There is nothing in the record indicating whether a stay was sought pending appeal or whether the Debtor obeyed the Order at issue. At oral argument, Debtor's counsel stated that the 2002 and 2003 tax returns and the divorce decree had been delivered to the Trustee. However, a 2003 tax refund of approximately \$600.00 was not transferred to the Trustee. The Trustee's counsel indicated that the Trustee did not intend to pursue the 2003 tax refund.

II. Discussion

Before reaching the merits of an appeal, we must make an initial determination as to whether we have jurisdiction. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986). The Constitution authorizes federal courts to hear only "cases" or "controversies." U.S. Const. art. III, § 2, cl.1. If there is no live case or controversy, then an appeal will be moot. *See*

Out of Line Sports, Inc. v. Rollerblade, Inc., 213 F.3d 500, 501 (10th Cir. 2000). A controversy is no longer “live” if the reviewing court cannot render “any effectual relief whatever.” *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). A party must seek that relief that is “capable of addressing the alleged harm.” *National Advertising Co. v. City and County of Denver*, 912 F.2d 405, 411 (10th Cir. 1990) (further quotation omitted).

Here, the Debtor seeks reversal of that portion of the Order requiring delivery of tax returns. Debtor’s counsel also requests a declaratory judgment prohibiting the ostensibly routine practice of some trustees in Utah to “order” a debtor to turnover copies of tax return(s) and refunds(s), if any are due, by a date certain, and then, as here, request from the court an order summarily barring entry of discharge pursuant to 11 U.S.C. § 727 if there is any failure to comply with the turnover order.² In effect, the Debtor is requesting a rather sweeping opinion prohibiting certain practices undertaken by some trustees in Utah. We conclude that we can offer no effectual relief as to any of these issues and so this appeal is moot.

The Debtor argues that the Order violated his due process rights by expanding the bankruptcy court’s oral ruling requiring the Debtor to turn over 2003 tax refunds by April 14, 2003, although the bankruptcy court never addressed that issue in the hearing. The Debtor also argues that the imposition of the April 14 deadline requires him to file his tax returns before the IRS

² In his appeal the Debtor raises two additional issues: 1) whether the Order requires him to turn over his 2002 refunds since such refunds are not property of his bankruptcy estate; and whether the Order summarily denies him a discharge without an adversary proceeding if he fails to comply with its terms. Because the Trustee concedes that the Order only requires turnover of any 2003 tax refunds and that the Order does not summarily deny the Debtor a discharge in the absence of an adversary proceeding, we need not address either argument here.

deadline in order to comply with the Order and then turn over any refund due him as a result of his 2003 income tax filing, whether he has received same from the IRS or the Utah taxing authorities or not. He asks that we reverse the portion of the Order requiring turnover of the 2003 refund by April 14, 2004. We are unable to offer the relief he requests.

The deadline for turnover has passed and the Debtor has the refund in his possession. While the Debtor does not contend that the 2003 refund would not be property of the Chapter 7 estate, he has not turned it over. We do not condone a Debtor disregarding a court order; however, at oral argument, the Trustee stated that she was no longer seeking the 2003 refund because it would result in a de minimus dividend to creditors.

We observe that the Debtor has complied with the Order with respect to the tax returns. While it may be that his rights were violated by the bankruptcy court's acceleration of the income tax filing date with respect to the 2003 return, he did not seek a stay, he has turned over the 2003 return, and the IRS mandated tax return filing date has come and gone. As such, there remains no controversy for this Court to determine.

III. Conclusion

For the reasons set forth above, we conclude that this appeal is moot. The appeal is therefore DISMISSED.